

UNITED STATES PATENT AND TRADEMARK OFFICE



APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,493	01/02/2002	Shin Koike	217788US0CONT	6986
22850 OBLON, SF	7590 04/04/2003 PIVAK, MCCLELLAND	, MAIER & NEUSTADT, P.C.	EXAMI	NER
FOURTH FL 1755 JEFFEF	OOR RSON DAVIS HIGHWAY	•	WEDDINGTON, KEVIN E	
ARLINGTO!	N, VA 22202		ART UNIT	PAPER NUMBER
			1614 DATE MAILED: 04/04/2003	15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 10/032,493

Applicanc(s)

Koike et al.

Examiner

Kevin E. Weddington

Art Unit **1614**



The MAILING DATE f this communication appears	n the c ver sheet with the c rresp ndence address				
Period for Reply					
A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the					
mailing date of this communication. If the period for reply specified above is less than thirty (30) days, a reply within the If NO period for reply is specified above, the maximum statutory period will apply at Failure to reply within the set or extended period for reply will, by statute, cause the Any reply received by the Office later than three months after the mailing date of the earned patent term adjustment. See 37 CFR 1.704(b).	nd will expire SIX (6) MONTHS from the mailing date of this communication. e application to become ABANDONED (35 U.S.C. § 133).				
Status					
1) Responsive to communication(s) filed on <u>Dec 23, 20</u>					
2a) ☐ This action is FINAL . 2b) ☒ This acti	ion is non-final.				
Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.					
Disposition of Claims					
4) X Claim(s) 6-35 and 40-50	is/are pending in the application.				
4a) Of the above, claim(s) 27-33 and 40-50	is/are withdrawn from consideration.				
5) Claim(s)	is/are allowed.				
6) 💢 Claim(s) 6-26, 34, and 35	is/are rejected.				
7)	is/are objected to.				
8) Claims	are subject to restriction and/or election requirement.				
Application Papers					
9) \square The specification is objected to by the Examiner.					
10) The drawing(s) filed on is/are	a) \square accepted or b) \square objected to by the Examiner.				
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
11) ☐ The proposed drawing correction filed on is: a) ☐ approved b) ☐ disapproved by the Examiner					
If approved, corrected drawings are required in reply to this Office action.					
12) The oath or declaration is objected to by the Exami	ner.				
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).					
a) ☑ All b) □ Some* c) □ None of:					
1. 💢 Certified copies of the priority documents have	e been received.				
2. Certified copies of the priority documents have	e been received in Application No				
application from the International Burea					
*See the attached detailed Office action for a list of the certified copies not received.					
14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).					
a) The translation of the foreign language provisional application has been received.					
15) ☐ Acknowledgement is made of a claim for domestic	priority under 35 U.S.C. §§ 120 and/or 121.				
Attachment(s)					
Notice of References Cited (PTO-892) Notice of Professoral's Peters Deputing Regions (PTO 949) Notice of Professoral's Peters Deputing Regions (PTO 949)	4) Interview Summary (PTO-413) Paper No(s). 5) Notice of Informal Patent Application (PTO-152)				
2) Notice of Dreftsperson's Patent Drawing Review (PTO-948) 3) Notice of Dreftsperson's Patent Drawing Review (PTO-948) 31 Notice of Dreftsperson's Patent Drawing Review (PTO-948) 31 Notice of Dreftsperson's Patent Drawing Review (PTO-948)					
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 12 and	6) Cther:				

Application/Control Number: 10/032,493

Art Unit: 1614

Claims 6-35 and 40-50 are presented for examination.

Applicants' preliminary amendments filed January 2, 2002 and March 11, 2002; information disclosure statements filed March 11, 2002; June 28, 2002; November 14, 2002 and December 13, 2002 have been received and entered.

Applicants' election filed December 23, 2002 in response to the restriction requirement of November 22, 2002 has been received and entered. The applicants elected the invention described in claims 6-25, 34 and 35 (Group I) with traverse.

Applicants' traverse of the restriction requirement is found persuasive and claim 26 will be examined with the elected Group I. Claims 6-26, 34 and 35 will be examined.

Claims 27-33 and 40-50 are withdrawn from consideration as being drawn to the non-elected invention (37 CFR 1.142(b)).

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Double Patenting

Claims 6-26, 34 and 35 of this application conflict with all the claims of Application No. 10/061,286. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one

Application/Control Number: 10/032,493

Art Unit: 1614

application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Double Patenting

Claims 6-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 and 11 of U.S. Patent No. 6,448,292. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present application teaches an oil composition comprising about 0.1 to 59.8% by weight of a triglyceride, about 40 to 99.7% by weight of a diglyceride, about 0.1 to 10% by weight of a monogylceride, and most about 5% by weight of a free fatty acid etc., and the patented application teaches the an oil composition comprising 10-40% by weight of a diglyceride, 40.1 to 89.8% by weight of a triglyceride and 0.1 to 10% by weight of a monoglyceride. Note the present application's ranges for each components fall within the ranges of the patented application. Clearly, one skilled in the art would have been motivated to select any percentage weight (within the ranges) of each component of the oil composition and achieve the same results in the absence of evidence to the contrary.

Claims 6-26 are not allowed.

Page 4

Application/Control Number: 10/032,493

Art Unit: 1614

A timely filed terminal disclaimer in compliance with 37 CFR 1.321[®] may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

The remaining references listed on the enclosed PTO-892 are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner K. Weddington whose telephone number is (703) 308-1235.

K. Weddington

April 2, 2003

Kevin E. Weddington
Primary Examiner
Art Unit 1614